

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6988**

**BILL NUMBER:** HB 1223

**NOTE PREPARED:** Jan 3, 2012

**BILL AMENDED:**

**SUBJECT:** State Public Works Contracting.

**FIRST AUTHOR:** Rep. Dermody

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill changes the manner by which the Department of Administration (IDOA) solicits bids for state public works projects by: (1) eliminating mail solicitations to contractors; and (2) requiring notice to be given as other public notices for contracts are given.

The bill eliminates the requirement that a bid for a state public works project be submitted in a sealed envelope that is opened in public and read aloud at a public bid opening. It also eliminates a requirement that contractors on state public works projects cannot be required to submit bids earlier than the time specified in the instructions for the opening of bids.

The bill requires bids for state public works projects to be opened so as not to disclose their contents to other bidders and be evaluated based on requirements in the invitation for bids.

The bill requires state public works contracts to be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder.

It provides for an Indiana business price preference in state public works contracting. The bill repeals a statute that provides a price preference to an Indiana business in state public works contracts if a bidder on the project is from a state that provides preferences unfavorable to Indiana businesses.

The bill also repeals a statute that requires the award of state public works contracts within 60 days of bid opening.

**Effective Date:** July 1, 2012.

**Explanation of State Expenditures: Summary- Bid Process:** The bill will have indeterminate fiscal impact on the bidding process for state public works projects. While the bill may increase the administrative costs of the bidding process for notice of bids, the ultimate project price cost or savings because of nondisclosure of the bid information during the process of negotiation is unknown.

*Price Preference:* The bill will have indeterminate fiscal impact on a state public works project, potentially increasing costs for labor and supplies. The purchasing preferences are awarded during the evaluation of bids and are a factor in determining who will be awarded contracts. The actual bid price does not change. As a result, a bidder with a bid higher than the lowest price may be accepted.

*Background - Bid Process:* Under current law, the Division of Public Works (DPW) is to solicit sealed bids by mailing notices to prospective contractors known to the DPW, posting notices on public bulletin boards in its offices, and through computer gateways. DPW estimates that the cost of the mailing and bulletin board posting is \$600 annually.

Also, the DPW is required by statute to open bids and read them aloud at a designated time and place. The contractors and members of the public are permitted to inspect and copy bids only after the DPW has copied the bids. The DPW estimates about 190 hours per year for staff to hold bid openings. The DPW awards the contract to the lowest responsible and responsive contractor, and the contract and written notice to proceed must be completed within 60 days. In the 60-day time frame, the DPW reviews the contractor qualifications. The DPW reports very few problems working within this time frame.

*Public Notice:* Under the bill, the DPW will use public notice advertising procedures in addition to electronic means to notify potential bidders. State agency websites are maintained under contract, and uploading notices is not expected to require additional resources. Under current law, the basic publication charge before January 1, 1996, was \$3.30 per square for the first insertion, plus \$1.65 per square for each additional insertion. A newspaper or qualified publication is allowed to increase the rate by amounts specified in the statute. The SBA equalizes the cost per line across fonts in a table that uses the square rate to establish line rates based on type size. According to the SBA, the square rate will be \$5.85, effective January 1, 2012.

*Bid Opening:* Under the bill, a DPW employee, in the presence of at least one other DPW employee, will open the bids. The bids are to be opened to avoid disclosure of their contents to competing bidders during the negotiation process. Bids are to be evaluated on requirements provided in the bid invitation and awarded with reasonable promptness. There is no estimate of whether this process will impact DPW workload for bid opening.

*Purchasing Preference:* This program is similar to other purchasing preferences allowed for state supply purchases (not in public works). An Indiana business can be determined by any one of several factors: The business location, where the majority of its payroll tax is paid, the residence of the majority of its employees, whether the business is making significant capital investments, or whether it is having substantial positive economic impact.

The price preference for public works projects is to be applied to contracts performed by Indiana business. The price preference for supplies for public works projects manufactured, assembled, or produced in Indiana will apply if two or more bids are the same. The Department of Administration will establish rules to determine when supplies are manufactured or assembled in Indiana.

The price preference offered is shown in the table below.

<b>Public Works Contracts Price Preference</b>	<b>Supplies Price Preference</b>
5% for purchases less than \$500,000;	3% for purchases less than \$500,000;
3% for purchases at least \$500,000 but less than \$1,000,000	2% for purchases at least \$500,000 but less than \$1,000,000; and
1% for purchases expected to be at least \$1,000,000	1% for purchases expected to be at least \$1,000,000

*Federal Funds:* Some federal grants do not allow geographic preferences to be considered in solicitation evaluations.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** IDOA.

**Local Agencies Affected:**

**Information Sources:** *Commodities Streamlining Manual*, IDOA, Procurement Division, September 2011, Jim Newcomer, IDOA, 317-234-7296.

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